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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,238	01/16/2002	Michael Paul Aronson	J6699/1(C)	6809

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EXAMINER

KANTAMNENI, SHOBHA

ART UNIT PAPER NUMBER

1617

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/050,238	Applicant(s) ARONSON ET AL.	
	Examiner Shobha Kantamneni	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09/02/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-7,9-13,15-17 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) NONE is/are allowed.
- 6) ☒ Claim(s) 1,4-7,9-13,15-17 and 19-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/02/2005 has been entered.

The Amendment received on 09/02/2005, wherein claim 1 has been amended, and claims 19-21 have been added.

Claims 1, 4-7, 9-13, 15-17, and 19-21 are pending, and examined herein.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-7, 9-13, 15-17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn, Jr et al. (WO 9625144, equivalent to US 6,080,708,).

Glenn, Jr et al. teaches the process for making a cleansing/moisturizing dual composition (a wet-skin treatment composition) which is an oil-in-water emulsion, wherein (a) an aqueous phase comprising water and dispersion stabilizer such as

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trihydroxystearin having the formula (i) (according to the formula therein, the molecular weight is deemed lower than 1000 Daltons and capable of forming a network in the aqueous phase), which is a fatty acid ester or C14-C22 acyl derivative as the instantly claimed, or silicas (see US 6,080,708, abstract; col.4, line 46 to col.6) or polymeric stabilizers herein; (b) a structured oil phase (a lipid phase) comprising triglycerides and a structurant in about 75% by wt of that forms a stable 3-dimensional network comprising solid fatty esters, fatty alcohols, wax, petrolatum, with droplet size 0.1-100 microns, having viscosity within the instant claimed (see col.10-16). Glenn et al. also teaches that the aqueous phase of oil-in-water emulsion comprises from about 1 part to about 30 parts of surfactant selected from the group consisting of anionic surfactants, nonionic surfactants, cationic surfactants, amphoteric surfactants, and mixtures thereof. The emulsions containing 0.5 parts to 8 parts C8-C14 soap i.e anionic surfactant wherein the soap has a counterion selected from K and N(CH₂CH₂OH)₃, in addition to synthetic surfactant such as amphoteric, nonionic, and cationic are taught as preferred embodiments. See abstract; column 6, lines 3-60, lines 44-49; column 24, claim 20-24. It is also disclosed, that the size of lipid droplets within the emulsion ranges from 0.1-100 microns. See column 13, lines 59-60.

Glenn, Jr et al. also clearly teaches the stepwise of the process for making the composition therein (see col 17, lines 25-65), including measuring skin retention and emulsions tests at 35 °C (see col.16, line 40-col.17, line 23). The reference also teaches that antimicrobial agents (preservative) and EDTA (chelating agent) and an essential oil

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are used. See col. 9, line 49 - col.10, line 37; col. 17, lines 42-45. See instant claims 37-38.

Glenn, Jr et al. does not expressly disclose that the lipid phase therein is at temperature below 35 °C, and the particular retention efficiency index, foam volume, and irritation potential as claimed herein.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to obtain or determine the particular temperature herein, the particular retention efficiency index, foam volume and irritation potential in the known process of Glenn, Jr et al.

One having ordinary skill in the art at the time the invention was made would have been motivated to obtain or determine the particular temperature herein, the particular retention efficiency index, foam volume and irritation potential in the known process of Glenn, Jr et al., since the process for making the composition of Glenn, Jr et al., which is same or substantially similar to the instant composition, is known according to Glenn, Jr et al. The methods or process of obtaining or determining the particular temperature herein in the test, the particular retention efficiency index, foam volume and irritation potential are also known in the art and taught by Glenn, Jr et al.

Therefore, obtaining or determining the particular temperature herein, the particular retention efficiency index, foam volume and irritation potential based on the known methods or process and those taught by Glenn, Jr et al. is considered well within conventional skills in the art, involving merely routine skill in the art.

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Claims 19, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn, Jr et al. (WO 9625144, equivalent to US 6,080,708), in view of Lochhead et al. (US 5,004,598, PTO-1449).

Glenn, Jr et al. as discussed above teaches the process for making a cleansing/moisturizing dual composition (a wet-skin treatment composition) which is an oil-in-water emulsion, wherein (a) an aqueous phase comprising water and dispersion stabilizer such as trihydroxystearin, or silicas or polymeric stabilizers herein; (b) a structured oil phase (a lipid phase) comprising triglycerides and a structurant in about 75% by wt of that forms a stable 3-dimensional network comprising solid fatty esters , fatty alcohols, wax, petrolatum, with droplet size 0.1-100 microns, having viscosity within the instant claimed. Glenn et al. also teaches that the aqueous phase of oil-in-water emulsion comprises from about 1 part to about 30 parts of surfactant selected from the group consisting of anionic surfactants, nonionic surfactants, cationic surfactants, amphoteric surfactants, and mixtures thereof.

Glenn et al. does not teach the process for making a cleansing/moisturizing composition without a surfactant.

Lochhead et al. teach a process for making cleansing/moisturizing oil-in-water emulsions without a surfactant, having a droplet size of 10 to 100 microns, comprising an (a) aqueous phase comprising water and a polymeric dispersion stabilizer, copolymer of acrylic acid, long chain acrylate; (b) oil phase comprises triglycerides, structurant such as petrolatum, fatty alcohol. See claims 1, 5, column 14-15; column 12, EXAMPLE column 3, lines 48-55; column 9, lines 30-33. It is also disclosed that the

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polymeric stabilizer can function as primary emulsifier or surfactant, and thus the composition can be made without conventional surfactants. See column 9, lines 34-37. It is further taught that these compositions made devoid of surfactant will have greater adhesion of the barrier oil to skin, and protection against skin irritants. See column 3, lines 13-18; column 4, lines 36-41.

It would have been obvious to a person of ordinary skill in the art at the time of invention to prepare a wet-skin treatment composition without a conventional surfactant.

One of ordinary skill in the art at the time of invention would have been motivated to prepare a skin-treatment composition as taught by Glenn without a surfactant because Lachhead teaches the process of making similar oil-in-water cosmetic composition without a conventional surfactant.

One of ordinary skill in the art at the time of invention would have been motivated to prepare a skin-treatment composition without any conventional surfactants with the expectation of obtaining a cosmetic composition which will have greater adhesion of the barrier oil to skin, and greater protection against skin irritants.

Response to Arguments

Applicant's assertion that "Glenn Jr. et al teaches that the aqueous phase should contain an anionic surfactant at a level of from about 2 to 20 parts (%)" is not persuasive because Glenn et al. teaches that the aqueous phase comprises from about 1 part to about 30 parts of surfactant selected from the group consisting of anionic surfactants, nonionic surfactants, cationic surfactants, amphoteric surfactants, and mixtures thereof.

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Thus, the aqueous phase can comprise a mixture of less than 1 % of anionic surfactant with other surfactants selected from nonionic, amphoteric surfactants. Also Glenn teaches that the emulsions containing 0.5 parts to 8 parts C8-C14 soap i.e anionic surfactant wherein the soap has a counterion selected from K and N(CH₂CH₂OH)₃, in addition to synthetic surfactant such as amphoteric, nonionic, and cationic as preferred embodiments. Thus even though Glenn et al. does not exemplify that the anionic surfactant can be present in less than 1 %, it has been well-established that consideration of a reference is not limited to the preferred embodiments or working examples, but extends to the entire disclosure for what it fairly teaches, when viewed in light of the admitted knowledge in the art, to person of ordinary skill in the art. In re Boe, 355 F.2d 961, 148 USPQ 507, 510 (CCPA 1966); In re Lamberti, 545 F.2d 747, 750, 192 USPQ 279, 280 (CCPA 1976); In re Fracalossi, 681 F.2d 792, 794, 215 USPQ, 570 (CCPA 1982); In re Kaslow, 707 F.2d 1366, 1374, 217 USPQ 1089, 1095 (Fed. Cir. 1983).

Applicant's argument that "Glenn Jr. et al is silent about any process or equipment used to break up lumps let alone the passage of the crude lumpy dispersion through a screen to induce emulsification" is not persuasive because Glenn et al. teaches that the size of the lipid droplets within the emulsion ranges from 0.1 microns to 100 microns, and further teaches that the size is an important factor for lipid deposition on the skin. Thus, the process used by Glenn such as duration and intensity of the mixing of the phases will result in the particle size which read on the instant particle size, and thus meet the instant claims.

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Note that in contrary to applicant's assertion "that many of their exemplary compositions contain only a low level of nonionic surfactant as the sole surfactant: such compositions would have been strongly discouraged by the teaching of Glenn Jr. et al", applicants specification contains EXAMPLES wherein the anionic surfactant, Na cetearyl sulfate is present in an amount of 3 % (8A), nonionic surfactant alkyl polyglycoside is present in 3 % (8C).

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shobha Kantamneni whose telephone number is 571-272-2930. The examiner can normally be reached on Monday-Friday, 7.30 am-3.30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Shobha Kantamneni, Ph.D

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